cloud

Inyat.

G.O. No. 1325

1325

Dated 2-5-1950

Revenue Department.
Subject.

ALIENATION - Land and Revenue - (South Kanara) - Karkal taluk - Marpadi village - S.No.151/1 - (Acres 3.65) - Free Reading Room etc. - Basel Mission - conditions of alienation - Not fulfilled - Resumption proposal.

Station; Madras. Ref.E.4705/48-2 Dated 13-6-49.

From

K.N.Anantaraman Esq., I.C.S.,
Secretary, Board of Revenue, Madras.

W.R.S.Sattianathan Esq., I.C.S., Commissioner of Land Revenue and Commercial Taxes.

--

Read:- Petition dated 1-8-48 from the Moodbidri Educational Trust, Moodbidri.
Letter from the Collector of South Kanara Set.C.No.16974/48-~~139~~ B3 dated 6-5-49.

Reference:-

Submitted to the Government.

2. In August '48 the President of the Moodbidri Educational Trust in South Kanara applied for the alienation of an extent of Acres 3.65 comprised in S.No.151/1 of Marpadi village, Karkal taluk. The Second Member of the Board (Mr.V.N.Kudva) to whom the petition was presented by the President in person, inspected the site and a copy of his remarks is enclosed. The remarks of the Collector were called for on the petition and they are contained in the letter cited above.

3. The point for consideration is whether the extent of Acres 3.65 in Marpadi village of Karkal taluk alienated to the Basel Mission for use as the site of recreation ground, a free reading room and a convalescent home for persons not suffering from tuberculosis or other contagious diseases need be resumed and if so whether any compensation need be paid to the alienee. No doubt the extent was at first granted in 1905 to the Mission for housing a school but when the school was later on closed and the question of resumption of the site consequently cropped up, the Basel Mission itself unconditionally relinquished the land with all the buildings and other improvements and when it asked for the realienation for the reading room, convalescent house and recreation ground and accepted the alienation subject to certain conditions one of which is resumption for breach of conditions it must be deemed to have entered into a fresh transaction. That it is so will be seen from the fact that after the realienation, the Basel Mission applied to the Collector as required by the conditions of alienation for grant of temporary permission for one year to the Moodbidri Educational Trust for housing a girls' school in one of its buildings. While so the Board considers that it is but just that when the Mission contravenes the conditions of alienation in the several ways refered to in para 2 of the notice received with the Collector's letter read above, the site should be resumed without any compensation with reference to condition (9) of the conditions of alienation, as pointed out by the Collector also. The Board therefore submits that the land may be resumed without any compensation except an exgratia offer of payment of a sum of Rs.41-6-0 in all for the trees conserved by the Mission on the plot without prejudice, as recommended by the Collector.

4. On receipt of orders, further steps to alienate the site in favour of the Moodbidri Educational Trust for a school will be taken.

For Secretary.

To
The Secretary to Government (Revenue Department). with encls.
Copy of the notes of inspection of the Commissioner of Land Revenue, Excise, and Prohibition d.1-8-48.

L.N.14.6.

To

The Honourable Commissioner of Land Revenue,
Madras Revenue Board.
Camp: Moodbidri, S.Kanara.

Humble petition of the Moodbidri Educational Trust, Moodbidri, S.Kanara.

Sheweth as follows:

1. The undersigned members of the Moodbidri Educational Trust have been allowed by the Director of Public Instruction to open a Middle - School for Girls in Moodbidri as per the proceedings of the Director R.C.No.917-D.47 dated 21st May 1948 in the current year itself under the System of Special Aid.

2. The Trust was started for advancing the cause of Secondary Education in Moodbidri. had have been able to collect a reserve of Rs.10,000/- (Rupees ten thousand) for this purpose and as there was no Girl's Secondary School between Mangalore and Karkala they decided to shoulder responsibility of running Girl's Ex Secondary ~~of running Girl's Secondary School~~ at Moodbidri.

3. The School has already been started with forms I to III inclusive and the Trust proposes to open IV Form in the next academic year.

4. The School is now housed with the permission of the Government in the land comprising in S.No.151-1 of Marpadi Village, Karkal Taluk, which was originally granted to the Basel Evangelical Mission of South Kanara for Educational Purposes. It was not used for such purposes and in 1942 the objects of alienation were altered as per the proceedings of the Board of Revenue - B.P.P. Mis.No.1678 dated 2nd October 1942 and the plot was granted to the Basel Mission for running a Reading Room and a convalescent home.

5. The Basel Evangelical Mission has not spent any money for either object. The Public of Moodbidri was running a Public Free Reading Room which was transferred to this plot after the above change. No convalescent home is being run and a cottage on the land has been rented out to a peon of the agricultural office for about the last six years.

6. Even in the revised grant of 1942, in para 10 of the Proceedings of the Board of Revenue - B.P.P.Mis.No.1678 dated 2nd October 1942, the Government has retained the power of resuming the land wholly or in part, if in the opinion of the Government the land is required for Public purposes.

7. We need not point out what high importance the Government attaches to female education and Moodbidri has been specially selected for the purpose of locating a Girl's Secondary School and the Trust has been asked to run it under the System of Special Aid.

8. With the prevailing sentiments the parents in Moodbidri are not prepared to send their Girl's to out of the place Schools and this plot as it is situated in the centre of the Town, is best situated for a Girl's School under present conditions. The said plot-- measures 3-65 acres which will be able to locate not only a Girl's High School but also a Hostel which we intend to start.

9. The Basel Evangelical Mission has not been able to provide for the public the facilities which it was expected to provide under the terms of the grant. The plot has not been used either for recreation or as a convalaseent home. The authorities of the Public Free Reading Room have already shifted their institution from the said plot and prefer the plot to be used for a School for their own Girl's.

10. Petitioners have to begin the construction of permanent buildings to house the Girl's High School and works on new buildings will have to be started by the end of September 1948 as the fourth form has to be opened from next academic year.

11. Petitioners pray that the Government may be pleased to-- resume S.No.151 - 1 of Marpadi Village, Karkal Taluk and grant the same to the Moodbidri Educational Trust.

Copy of letter No.Ref.C.No.16974/48.B3. dated 6-5-49, from the Collector of South Kanara.

Sub:- ALIENATION - Land and Revenue - South Kanara District - Karkal Taluk - Marpadi village -S.No.151/1 - Basel Mission - Breach of condition - Report submitted.

Ref:- Ref.E.No.4705/48-1 dated 10-8-48 of the Board of Revenue, Madras.

- - -

S.No.151/1 of Marpadi village, Karkal taluk, South Kanara District measuring 3.65 acres was first conditionally assigned to the Basel Mission, Mangalore in this office proceedings Dis.No.1556 D./Revenue of 1905 dated 16-11-1905 for the purpose of housing a school. When the school was later on closed, enquiries were started for resuming the plot. During the enquiry, the District Chairman of the Basel Mission consented to the unconditional relinquishment of the land, with the all the buildings and other improvements. But at the same time he applied for the re-alienation of the plot, in favour of the Mission for the purpose of a free Reading Room, a convalescent house, for persons not suffering from Tuberculosis and other contagious diseases and a Recreation ground. The unconditional relinquishment of the plot was accepted and resumption sanctioned by the Board in Ref.No.E/N.212/42-3 dated 31-8-42. The Board in its Ref.No.E/N 212/42-4 dated 31-8-1942 also recommended to the Government the realienation of the plot to the Basel Mission, for the purpose of a Free Reading Room a Convalescent house, and a Recreation ground. In G.O. No.Mis,2107 Revenue dated 21-9-42, the Government were pleased to sanction the re-alienation, applied for, and this was communicated in B.P.Mis.No.1678 dated 2-10-1942 on 22-6-48 on the initiative of the Moodabidri Education Trust. The Basel Mission applied for the grant of a temporary permission for one year to the Moodbidri Education Trust for housing its Girls Middle School in one of the buildings in the plot. Permission was accordingly granted in this office Ref.C.No.13099/48 B3. dated 28-6-48, subject to Board's approval, as the matter was urgent, and my action was ratified by the Board in their L.Dis.E.3895/48 dated 12-7-48.

2. The Education Trust, Moodbidri, then presented a petition to the Commissioner of Land Revenue, Madras, while he was camping at Moodbidri of this district, for the resumption of the plot and granting the same to the Education Trust for its activities. The commissioner held a personal inspection of the plot on 1-8-1948, and a copy of the notes of Inspection together with a copy of the petition, was received in this office with Board's reference E.No.4705/48-1 dated 10-8-48 for remarks with proposals for resumption.

3. As there has been violation of the conditions of alienation, a formal "notice" was issued to the Mission to show cause why the plot should not be resumed for breach of conditions of the grant. The Mission explained that none of the conditions of alienation, has been violated, and that further proceedings may be dropped. A copy of the show cause notice issued and the reply received from the Mission are enclosed, for reference. The explanation of the Mission was then sent to the Revenue Divisional Officer, Coondapoor for remarks. The Revenue reports that the bigger one on the plot, which should have been used as a convalescent Home, under condition (2) of the alienation, had never been used as such by any member of the public, that it was used occasionall as a rest house by the Basel Mission pastors, and that the buildings has been in the occupation of one Siddu Shetty and his relations, who were also enjoying the usufructs of the trees, in the compound. It is also reported that one Mr.A.T.Soans, was the Local Manager of the Mission properties at Moodabidri and that Siddu Shetty referred to above was installed in the plot by Mr.A.T.Sons, to whom Siddu Shetty is reported to have been paying annually a sum of Rs 20/- by way of rent, Siddu Shetty also denies that he was ever a care taker of the Mission properties, as against the explanation offered by the Mission in para 2 & 3 of its letter. The Revenue Divisional Officer, then raised two points, for referring to the Government Pleader for opinion:- viz.,

(i) that failure on the part of Government to effect re-entry, after its relinquishment by the Mission (please see para 1 of the report) has presented certain legal difficulties in the matter of payment of compendation to the assignee.

(2) whether the alienation proceedings subsequently made, without the Government acquiring a title over it, by affecting re-entry, can be said to be valid. The Revenue Divisional Officer's argument was that had the Government entered upon the plot at the time of the original resumption in 1942, the grantee would have been estopped from claiming the compensation now.

4. The Government Pleader was accordingly consulted on these points. His view is that the Mission had unconditionally surrendered the land in question and had accepted the fresh alienation ordered in G.O.No.Mis.2107, Revenue dated 21-9-42 communicated in B.P.Mis.No.1678 dated 2-10-42 and that under these circumstances no re-entry was necessary. Moreover, the Mission is estopped from disputing the title of the Government and is governed by the terms of the above Government Order. If the Mission has violated any of the conditions enumerated in the order, then the could be resumed without paying anycompensation under condition (9) of the conditions of alienation.

5. The conditions regarding the use of the building as a convalescent in this case have not at all been fulfilled. In particular, there are no definite arrangements, such as are associated with a convalescent Home. There is no resident care-taker if Siddu Shetty's denial is to be accepted. There is no resident Cook, and there is no register of applications for occupation of the convalescent Home, and the disposal of applications, if any received. There is also a definite violation of clause (8) that the convalescent Home shall be open to all members of all castes and communities. Even if it has been used as a Convalescent Home, its use has been confined to one single community, namely the Roman Catholics. Thus there has been a definite violation of the conditions of alienation, and therefore the land has to be resumed under clause (9) of the conditions of alienation. Though the alienee is entitled to no compensation for resumption of the land, under this clause, an ex-gratis offer of payment of a sum of Rs 41-6-0 in all relating to the value of trees conserved by the Mission in the plot, may be made without prejudice.

6. As regards, the apprehension expressed by the Revenue Divisional Officer, Coondapoor and the Government Pleader's view my submission is, that the Mission is estopped now from raising the plea of payment of compensation, because the Mission has accepted the alienation, and the conditions governing it; and they cannot under law raise any issue relating to rights and titles of the alienor.

7. The other buildings in the plot, in which the Reading Room was housed, now accommodates the school, managed by the Mudabidri Education Trust, for which a Temporary permission, was given, till the end of the current school year, in this office-- reference C.No.13099-48-B3 dated 28-6-1948 as already referred to. The Education Trust does not pay any rent for occupation of these buildings. The Revenue Divisional Officer, Coondapur reports that it is known however far this body represents the public of the place. Proposals for resumption of the plot only are being-- submitted now with reference to the Board's Ref.E. No.4705-48 dated 10-8-1948. The question of re-alienation of the plot to the Moodabidri Education Trust, will be re-examined and separate proposals will be submitted on receipt of Board's orders in the matter.

Enclosures: 1. Copy of show-cause notice.
2. Explanation of the Mission.

- - -

/True copy/

Copy of letter No.Ref.C.No.16974-48 B3. dated 4-10-48 from the Collector of South Kanara.

Sub:- ALIENATION - Land and Revenue - Karkal Taluk - Marpadi village - S.No.151/1 in favour of Basel Mission - Breach of condition - Show cause notice.

- - -

S.No.151/1 of Marpadi village of Karkal Taluk, was alienated to the Basel Mission, for use as the site of recreation ground, a free reading room and a convalescent home in G.O.No.2107 Revenue dated 21-9-1942 communicated in B.P. 1678 dated 2-10-1942, a copy of which, was communicated in this office, R.S.No. 2678-40 dated 26-10-1942.

2. Enquiry shows that the building intended for use as a convalescent home is not used for the purpose and that it has been leased out on rent to one Siddu Shetty and that the Mission has been deriving income from it. This is contrary to condition 2 of the conditions of alienation. Enquiry also revealed, that the reading room which was housed in tha smaller buildings was managed by the public and not by the Mission. Thus condition 6 of the conditions of alienation has also been contravened by the Mission, before this building was permitted to be occupied, by the Mudabidri Education Trust, temporarily for housing their Girl's Secondary School, in this office Ref.C,No. 13099-48-B3 dated 28-6-1948, as ratified by the Board of Revenue in their L.Dis. E.3895-48 dated 12-7-1948. These irregularities were also noticed by the Commissioner of Land Revenue, Excise and Prohibition, when he inspected the site of 1-8-1948.

3. You are, therefore, requested to show cause, within a month from the date of receipt of this notice, why the plot, should not be resumed, for breach of conditions of the grant. If no reply is received within the time given, further action deemed fit will be taken.

Sd/ S.R.Kaiwar,
4-10-48
Collector.

Copy to the Revenue Divisional Officer, Coondapur for report on para 2 of the Board's Reference E,No.4705-48-1 dated 10-8-1948 regarding payment of compensation, if any.

/True copy/

- - -

- COPY -

Before the Collector of South Kanara.

Rev.J. Rossel, Secular-Agent, B.E.Mission,
Balmatta, Mangalore.

begs to state as follows:-

1. That he received a letter dated 4-101948, Ref.C.No. 16974-48-B3 from this office which reached him on 7-1048, calling upon him to show why the plot S.No.151/1 of Marpadi Village, Karkal Taluk, should not be resumed for reasons stated therein.

2. It is submitted that Siddu Shetty referred to in the letter is the watchman in charge of the premises and the Mission derives no income thereby.

3. The garden attached to the building is also looked after by him and the sale of the fruits, such as, jacks, mangoes, etc. yield a net income of not more than Rs 10/. per annum, which is hardly sufficient for the up-keep of the buildinggs.

4. The bigger building was repaired in 1942 and 1945, at a cost of about Rs267/- in all and it is in excellent condition.

5. The building has actually been used as a convalescent house free of charges and is always at the disposal of pople who may require it for purposes of health.

6. The smaller building was formerly used as a Free Reading Room, from its very inception it was managed by the public under the general control of the Mission.

7. A reference to the Memorandum Ref.R.O.C.No.B3/2678-40 dated 12-3-1941 and reply thereto by the Mission dated 14-3-1941 will amply prove the above statement.

6/

8. It is also submitted that condition No.6 in the proceedings of the Board of Revenue dated 2-10-1942 is very general in its terms.

9. It is therefore submitted that none of the conditions of the proceedings aforesaid has been violated and that further proceedings may be dropped.

Sd./ J.Rossel.

/True copy/

For Secretary

L.N.14.6.

Copy of the Notes of Inspection of the Commissioner of Land Revenue, Excise and Prohibition, dated 1-8-1948.

I inspected the lands on 1-8-1948. These lands (S.No.151/1 - 3.65 acres of Marpadi, Karkal Taluk) are said to have been alienated to the Basel Mission for a free reading room and a Sanatorium. The Free Reading room is maintained by the Public and not by the Mission. There is a building on the premises, which is now rented out by the Mission to a peon of the Agricultural Department.

Before considering any proposal for alienation in favour of the Trust, steps have to be taken by the Collector for resuming the land. It is not known what action the Collector is taking.

The Educational Trust is doing useful work. The Girls' Secondary School has been raised to a middle school and the trust is now taking steps to raise it into a high school.

Sd. V.N. Kudva
1-8-48.

-(True copy)

for Secretary.

VSS.28.6.

Copy of the Notes of Inspection of the Commissioner of Land Revenue Kolaba and Prohibition, dated 1-8-1948

I inspected the lands on 1-8-1948. These lands (S.No.151/1 - ..... acres of Marpadi, Karnal Taluk) are said to have been alienated to the Basel Mission. For a free reading room and a Sanatorium. The Free Reading room is maintained by the public and not by the Mission. There is a building on the premises, which is now rented out by the Mission to a peon of the Agricultural Department.

Before considering any proposal for alienation in favour of the Trust, steps have to be taken by the Collector for resuming the land. It is not known what action the Collector is taking.

The Educational Trust is doing useful work. The Girls' Secondary School has been raised to a middle school and the trust is now taking steps to raise it into a High school.

Sd. V.N. Kudva
1-8-48.

(True copy).

for Secrets

V.D.S.23.8

Rev. Deptt 8

Memo No 3758 3.A/49-3 dated 27.9.49

Received in the Secretariat on 27.9.49

'A' 27/9/49

Subject:- Land and Revenue - (South Kanara) Karkal taluk - Marpadi village - S.No. 151/1 - conditions of alienation - Breach by the Basel Mission - Resumption.

From the Bd. of Rev. Rep. E 4705/48-2 dated 13.8.49

P.I.C.

The attention of the Hon'ble Minister is invited to the ~~terms of the Collector's letter~~ para 5 of the Collr's letter dated 6.5.49 submitted with the Bd's Rep. P.I.C. quoted above, wherein it is stated that there is ~~a definite violation~~ of condition (8) of the grant viz that the convalescent Home shall be open to all members of all castes and communities. The Bd. of Rev. is requested to ascertain and report whether there is any proof that any one was prevented from using the convalescent Home.

(2) 18.9.49 (J)

P.T.O.

2. The Bd. is also requested to submit the reports of the R.D.O. Coondapur & the Govt. Pleader referred to in the Collector's letter no Rep. C. 16974-48 B3 dated 5.49, & the B.P. Mis no 1678 dated 2.10.42 and all other connected records.

The Govt. is also requested to state whether the buildings in the land were constructed by the Municipality.

9.9.49

14

By order,

To
The Bd. of Rev.

REVENUE DEPARTMENT.
Subject.

ALIENATION - Land and Revenue (South Kanara) Karkal Taluk - Marpadi village - S.No.151-1 Condition of alienation - Breach by the Basel Mission - Resumption - Proposal - Further report - Submitted.

Madras Ref.E.No.4705/48-4 Dated 6-12-49.

From

Sri C.V.Narasimhan I.C.S.,
Secretary In-charge, Board of Revenue.

Sri S.Ranganathan I.C.S.,
Commissionor of Land Revenue.

Read: Govt. Memo No.37583-A/49-3 Revenue dated 27-9-49. From the Collector of South Kanara Ref.B3-16974/48 dated 26-11-49 with enclosures;

Read: Board's Ref.E.4705/48 dated 8-10-49.

There is no proof that anyone was prevented from using the convalescent Home.

2.Copies of the report L.Dis.8496/48 dated 30-3-49 of the Revenue Divisional Officer, Coondapur and the Government Pleader's opinion N.Ref.A.382/49 dated 24-4-49 and the following five disposal files of this office are enclosed.

(1) R.Dis. 2678/40, (2) D.Dis.13088/48. (3) D.Dis.4593/39 (4) D.Dis.2721/39 and (5) D.Dis.6148/38.

3. The buildings in the land were constructed by the Mission.

True Copy.

Copy of letter L.Dis.C.No.8496/48 dated 30-3-1949 of the Revenue Divisional Officer, Coondapur to the Collector South Kanara.

Alienation - Land Karkal Taluk - Marpadi village S.No.151/1 Resumption - Report submitted.

Ref: Collector's Ref.16974/48 dated 4-10-48 and 16-11-48.

I have inspected S.No.151/1 of Marpadi village and have enquired into the breach of conditon of its grant in favour of the Basel Mission in 1942.

2.The bigger building standing on the plot should have been used as a Convalescent Home under the condition of the grant. But my enquiry has revealed that it had never been used as such by any member of the public. It was used occasionally as a rest house by the Basel Mission pastors. The building has been in the occupation of one Shiddu Shetty from 1943, until his transfer from Moodabidri in about 1945. The brother of Shiddu Shetty, his wife and widowed sister continue to live in it. It is admitted that the occupants pay a sum of Rs.20/- per year for the occupation of the house but that it is not in the shape of rent but is only to meet the charges towards white washing, monsoon repairs etc., The building is a pretty big one and the payment of Rs.20/- per year for its use is out of all proportions. It might at best defray the charges of whitewashing it annually; but would not even meet the charges of its monsoon repairs. The occupants also have the free use of the usufruct of the (cashewnut) of the compound which may fetch about Rs.20/- annually.

2. Mr.A.J.Soans was the local Manager of the mission properties at Moodabidri from the date of the alienation. He was in the Agricultural Department prior to this, Shiddu Shetty who is an employee in the Agricultural Department, was very well known to him. Mr.Soans lives at the mission from about 2 miles from the plot now in question. As he could not effectively watch the alienated property from his residence at the farm, it is very likely that he had his old acquitance Shiddu Shetty installed at the convalesant Home an at the same time struck a bargain with him for payment of a sum by the latter (call it rent or whatever it may be) for the upkeep of the buildings. The statement of Revenue J.Rossel is thus partly correct. Shiddu Shetty however denies that he was ever a care taker of the mission properties.

3. In the event of resumption of the plot or its acquisition under condition 10 of the grant, the compensation payable to the mission for the land, and trees will be the amount paid for them by the grantee or their present value whichever is less; the compensation payable for the buildings thereon is the amount paid for them by the grantee or their present value whichever is less plus the initial cost or present value of buildings etc., effected on the land by the grantee in conformity with condition 3 of the grant. The grantee had not paid any amount for the land, trees, buildings or other improvements at the time of the grant or subsequently not have any buildings or improvements been put up by the grantee. The plot, which was assigned for purposes of school in 1905, was relinquished unconditionally by the mission in 1942. The alienation of the plot made in G.O.No.2107 Rev. dated 21-9-42 was a fresh grant. This being the case No compensation is due to be paid to the grantee under condition 10 of the grant. However the list of trees prepared by the Revenue Inspector shows that 2 cashewnut trees, 2 casurina trees, 4 jungle wood trees, and 25 Maruva plants in all valued at Rs.21-6-0 exist on the plot in addition to the trees in existence in 1940. Some of these may have sprung up spontaneously. But one bread-fruit tree, one graft mango tree and one coconut plant valued at Rs.15/- which existed in 1940 are not forthcoming now. It may be considered whether compensation is payable for the above new trees.

4. Before the plot was alienated to the Basel mission in 1942 ----- it had once been assigned for a school in favour of the Basel Mission. But the plot was relinquished by the Mission. However, the physical position of the land was with the Mission in view of the then contemplated proposals to alienate the land in favour of the Mission for some other purposes and no re-entry was effected. I am of opinion that the failure on the part of Government to effect re-entry after relinquishment has presented certain legal difficulties in the matter of payment of compensation to the assignee. Had the Government entered upon the plot then, when it was relinquished by the Mission in 1942 the grantee would have been certainly estopped from claiming the compensation now. Another point for consideration is whether the alienation proceedings subsequently made without the Government, acquiring a title over it by effecting re-entry can be said to be valid. These are two legal points which may be referred to the Government Pleader for his opinion.

5. The other building accommodates the school managed by the Moodabidri Education Trust. It is not known how far this body represents the public of the place. This trust does not pay rent for this building.

The following records are enclosed.

(1) Collector's C.No.16974/48 (2) Collector's R.Dis.2678/40 (3) Collector's D.Dis.13099/48 (4) Karakal Tahsildar's D.Dis. 6457-49 and his R.Dis.4646/40 (6) Records of present enquiry.

True Copy.

Copy of N.R.f.A.382/49 dated 24-4-49 of the Government Pleader Mangalore to the Collector of South Kanara.

No question of re-entry arises. The mission has unconditionally surrendered the land in question and has accepted the fresh alienation as per the Board's order B.P.Mis. No.1678 dated 2-10-42 under the circumstances no re-entry is necessary. Moreover the mission is stopped from disputing the title of the Government. At present the rights and liabilities intense between the Government and the mission are governed by the terms of the above B.P.

If the Mission has violated any of the conditions enumerated in paras 1 to 8 of the B.P. then the land could be resumed without paying any compensation as per condition 9. The question whether the Mission has violated one or more of the conditions is a question of fact - papers returned.

K.S.Hegde. 24-4-4
Government Pleader.

True Copy.

A copy of the Collector's letter read above is submitted to Government with reference to their memo No.37583-A/49-3 Revenue dated 27-9-49.

for Secretary In-charge.

To the Secretary to Government Revenue Department with enclosures for reference and return.

(1) B.P.Mis.1678(2) dated 2-10-1942
Collector's R.Dis.2678/40
(3) " D.Dis.13099/48.
(4) " D.Dis.4593-39.
(5) " D.Dis.2721-39.
(6) " D.Dis. 6148-38.

A.P.6-12.

R.D.
13

Issue, acceptance for Enclo.
Action
11/5/50

Rev 3758 3 A/49 Read :- from 2107 Rev dt 21/9/42
CF From the Bd's Rev Ref. E. 4705/48-2 dt 13/6/49
Ltr dt 7 CF Memo to the Bd's Rev No 3758 3A/49.3 dt 27/9/49
Ltr dt 12 CF From the Bd's Rev Ref. E. No. 4705/48-4 dt 6/12/49.

G.O. (MS) 1325 dt 2-5-50.

The Govt accept the recommendation/CF of the Board's Rev in its Rep first read above and direct that the plot of land comprised in S. No 151/1 of Manpasi Vge, Kankal Taluk, Sivan Kovil Dt, measuring Ac. 3-65 cents alienated in favour of the Bodak Mission in G.O. (MS) No 2107 Rev dt 21/9/42 be resumed from its control without payment of any compensation.

2. As regards the exemption payme

14

of Rs. 41-6-0 in respect of the trees
concerned by the Mission on the plot, the note on f/. 12 N.
Govt consider that as the Collr
has not given any valid reason for [illegible] on
making the payment contrary to the f/11- ante.
conditions of alienation no exgratia
payment [illegible] be made.

25/4/51

To the Bd. of Rd.
(L.R).
with records
returned.

Adjustments
5/5/51

2nd 4 5

Rev Deptt

37583 A/49] Alienation – Land and Revenue – (South Kanara) Karkal taluk – Marpadi village – S.NO 151/1 – For Free Reading etc – Basel Mission – Conditions of alienation not fulfilled – Resumption.

From the Bd. of Rev. Ref. E.4705/48-2 dated 13.6.49

p1 CF

To RS

Please see the Bd's Reference and its enclosure at pp 1-7 CF

2 The President of the Moodbidri Educational Trust, Moodbidri, South Kanara dt has applied for the alienation of an extent of Ac 3.65 comprised in S.NO 151/1 of Marpadi village, Karkal taluk for running a school.

p2 CF

~~For a history of the land in question please see para 1 of collector's letter on p.3 CF~~. It will be seen ~~from~~ that in G.O. NO 2107 Rev. dated 21.9.42, the land was ~~sold~~ alienated in favour of the Basel Mission for use as the site of a recreation ground, a free reading room and a convalescent home for persons not suffering from tuberculosis or other contagious diseases. The conditions of alienation will be found at pp 9-10 of the G.O.

~~pp 7-10 of (J)~~ A on 11.1.47 (J)

p 7 of (J)

(J)

3 It is reported that the bigger building on the plot which should have been used as a convalescent home under condition (2) of the alienation, pp 8 of (J)

Js on p 3 CF

had never been used as such by any member of the public, that it was used occasionally as a rest house by the Basel Mission Authorities and that it has been leased out to one Siddu Shetty for an annual rent of Rs 20. As the conditions regarding

Pbd

the use of the building as a convalescent home have not been fulfilled and as there is also a violation of clause 8 condition (8) viz. that the convalescent home shall be open to all members of all castes and communities, the Collector has proposed that the land may be resumed under condition (9) of the conditions of alienation. Though the alinee is not entitled to compensation under condition (9), the Collector has proposed that an ex-gratia offer of payment of a sum of Rs. 41-60 in all being the value of the trees conserved by the Mission on the plot, may be made without prejudice. For the reasons stated at 'A' on p1 CF, the Bd. recommended the Collector's proposal. It has stated that further steps to alienate the land in favour of the Moodbidri Educational Trust for a school will be taken in receipt of Govt. orders on the resumption proposals.

para 5 p4 CF

p9 or (J)

para 5 p4 CF

'C' enclp 1 CF

para 3 & 1 CF

It will be seen from paras 3 to 5 of Collector's letter on pp 3-4 CF and from the copy of notes of Inspection of the Commissioner of Land Revenue, Excise and Prohibition on p7 CF, that in this case there has been a breach of the conditions of alienation. According to condition (9) of alienation, the Govt. may resume the land with any buildings thereon, in the event of the infringement of any of the conditions of the grant and in the event of such resumption, no compensation shall be payable for any improvements that may have been effected or other works that may have been executed on the land by the grantee. In view of this, it is for orders whether the Govt. will accept this Bd's recommendation / agree to the Bd's for the

The Bd's recommendation for resumption of the land may be accepted. Orders. [illegible]

p9 or (J)

C-2

for the payment of Rs 41.6.0. towards the value of trees.

If resumption of the land is ordered, the Bd. may be asked to take steps for alienating the land in favour of the Moodbidri Educational Trust for running a school.

5. ~~Legal~~ Legal may see for remarks.

Sd 29.6.49 / 30.6.49

In the circumstances reported by the Collr at ¶ 3 of the Govt may approve the recommendation of the Board that the land in qn should be resumed.

The ex-gratia payment for the trees conserved by the Mission may also be sanctioned as a special case.

4/7/49

Revenue 375 83 A/49-1

4.7.49

ASST. SECRETARY TO GOVERNMENT 5 - JUL 1949 EDUCATION AND PUBLIC HEALTH DEPT.

E. & P. H. C2

51117

The proposal at X above may be agreed to in this dept. and the file passed on to Finance Dept. W.O

13/7/49. 16/7/49

Thro' B. 14/7/49 15/7/49

B. (1) Who constructed the buildings on the plot and how are they to be disposed

(2) Where are the reports of the

4

the R.D.O, and C.P referred to in para 6, on page 4 of

③ How is the statement reconciled that the Convalescent home is open to all, and that a free reading room is actually seen in the smaller building - Is there proof that any one was prevented from using the convalescent home - In any case, now are the specific terms of the alienation appealed merely by the fact that the public has not used the building. It is necessary to examine this with reference to the proceedings of the Board of 1942

It may be necessary for Legal to see

18/6-7

The point raised by the Secy. requires reconciliation with the Board of Revenue. The file may be sent to Revenue.

6.7.49 27-7-49 Rev

TV AS

Rev. Deptt

Fin and Legal have not seen the case as ordered at 'A' on p. 3 above. The file may now be sent to those depts.

28/7/49 3/8/49

Fin Legal

(Copy is not available)

ADDITIONAL ASST. SECRETARY TO GOVERNMENT
46141A
30 JUL 1949
REVENUE DEPARTMENT

W. O. No.
5111-7-1C2-E
27-7-'49

ASSISTANT SECRETARY TO GOVERNMENT
51260
5 AUG 1949
Rev no. 375-83-A/49-1
FINANCE DEPARTMENT

3.8.49

Fin (Accts)

The notes on pages 1–4 ante may be perused.

Pending examination of the points raised by the Secy. E.P.H. at pp. 3–4 ante no revenue audit seems called for in this deptt. Now. Revenue will no doubt send the case again to this deptt. in due course after consulting the Board of Rev. and the Legal Deptt

PW 6/8/49

C&H – 6 & 49 Legal

Fin No 5120 Accts/Reps 6 Aug

Legal Dept

Rev may call for a full report from the Bd of Rev, with connected records on the points mentioned in E.P.H Secy's note. The file may then be sent to this Deptt

HMP/1084 10.8.49.

Rev. Dept

ASSISTANT SECRETARY 10090 9 AUG 1949 LEGAL DEPARTMENT

H3 ante

R.D.No 10090/49-1 11.8.49.

ASST. SECRETARY TO GOVERNMENT 12 A-3058A

H3 12/8/49

1/8

PTO

b/

TO AS ...

Please see the notes at pp 1-5 above

2 E.P.H. Secretary has raised the following points :-

i) Who constructed the buildings on the plot — Bottom of p. 3 above

ii) How are they to be disposed of — above

iii) Where are the reports of the R.D.O. referred to in para 3 on p 3 of the Govt. Pleader referred to in para 4, on p. 4 CF. — pp 3-4 above

iv) How is the statement recorded that the convalescent home is open to all and that a free reading home was actually run in the smaller building? Is there any proof that anyone was prevented from using the convalescent home. In any case, how are the specific terms of the alienation affected merely because it is stated that the public has not used the building. It is necessary to examine this with reference to the proceedings of the Board of Wks.

A
B
C
Rs. vide p 4 above

B.P. No 467 & order 2.10.42 — para 1 p 3 CF. Bottom of p 3 above

Item (i) above

In 1905, the site in question was first contractually assigned to the Basel Mission, Mangalore for the purpose of housing a school. The school was closed later on. — para 1 p 3 CF

When the question of the resumption of the plot was considered, the District Chairman of the Basel Mission consented to the unconditional relinquishment of the land with all the buildings and other improvements. In view of these facts it may be presumed that the buildings were constructed by the Basel Mission. It does not appear necessary to obtain information from the Collector on this point.

we may get this confirmed by Board

Item (ii) above

p 3 above

Attention is invited to condition (9) of the conditions of alienation on p 9 of G.O. No 2107. (J)

Rs. dated 21.9.42. According to that condition, if there are buildings on the land, which is resumed for infringement of any of the conditions of the grant, the Govt. may direct the grantee to remove them, and if the grantee refuses to remove them when so directed, the Govt or any Officer empowered by the Govt. in this behalf shall have power to remove the buildings and realise the cost of such removal by the sale of the materials. It may be mentioned in this connection that the President of the Moodbidri Educational Trust, Moodbidri has requested that the site in question, after resumption by the Govt, may be alienated in its favour for running a school. The Trust may, perhaps require the buildings also for the purposes of school. If the Govt. decide ultimately to grant the site to the Trust, the question of granting the buildings also to it on payment of their cost may be considered if the Trust and the Basel Mission agree to the adoption of such a course.

Item (iii) on p 6 above

The reports of the R.D.O and the Govt. Pleader have not been submitted by the Bd. The Bd. may be asked to submit them now.

Item (iv) on p 6 above

'A' on p 6 above.

The R.D.O. has reported that the big building on the plot, which should have been used as a convalescent Home, has never been used as a convalescent Home such by any member of the public, that it was used occasionally as a rest house by the Basel Mission pastors and that the building has been in the occupation of one Siddanna Shetty and his relations. It is also

reported that there are no definite arrangements, such as are associated with a convalescent Home, that there is no resident cook, and no care-taker and that there is no register of applications for occupation of the convalescent Home and of the disposal of such applications. It is further stated that even if the building has been used as a convalescent Home, its use has been confined to a single community; namely the Roman Catholics and that there is a definite violation of condition 8 of the grant viz. that the convalescent Home shall be open to members of all castes and communities. With reference to 'D' 2' on p.6 above, it is submitted that there is no information on the file to show whether any one was prevented from using the convalescent Home. The Bd may be asked to ascertain and report on this point.

3' on p.6 above

According to ... conditions of the grant, the reading room ~~shall~~ ought to be housed in the existing building and managed by the Mission. It is reported that the reading room was managed by the public and that condition b of the grant was infringed by the Mission. The Mission has stated that the reading room was managed by the public under the general control of the Mission.

With reference to 'C' on p.6 above, the Bd may be asked to submit its B.P. Mis No 1678 dated 2.10.1962.

3 Subject to orders, a draft memo submitted "for" approval.

21-5-64 S

Note revised

P.T.O.

Revenue Department

Issued as Memo. No. 37583 A/49-3 dated 27.9.49.

From the Board of Rev. Refce. E.No.4705/48-4 d/-6.12.49

***

To A.S.

The notes from p. 6 ante, the memo. to the Board of Rev on pp 8-9 c.f., and the Bdte refce. and encls. at pp. 10-12 c.f. may be perused.

2. Information is now available on some of the points raised by E. & P.H. Secy. mentioned in para 2 of the note on p. 6 ante.

As regards item (i) in para 2 on p. 6 ante, it is reported that the buildings on the land were constructed by the mission.

As regards item (iii) on p. 6 ante, the Board has submitted copies of the reports of the R.D.O. Coondapur, and the Govt. Pleader, which are at pp 10-12 c.f. The Govt. Pleader is of opinion that the question whether the mission has violated one or more of the conditions is a question of fact.

As regards Z on p. 6 ante, the Board has reported that there is no proof that anyone was prevented from using the convalescant home. Attention is however invited in this connection to the portion marked M on pp 7-8 ante.

3. The file may now be sent to E. & P.H., Fin. and Legal for remarks as already suggested with ref. to the proposal of this department at X on p. 3 ante.

24/11/50

E & P H
Fin
Legal

The above letter & the board's refce show that the conditions of allotment have been infringed. We may therefore accept the Board's recommendation that the site be resumed without enquiry with reference to condition (9) thereof of allotment. No compensation

MCO

to the building areas as they had been unconditionally relinquished by the Mission & this was resumed by the Govt in 1942. We may also accept the Board's recommendation & make an ex-gratia payment of Rs 41-6-0 for the fees originally by the Mission without prejudice

A

B.

27/1/50

E. & P.H. (C.)

Rec. no. 3755 3 A 149

ASST. SECRETARY TO GOVERNMENT 7228 31 JAN 1950 EDUCATION AND PUBLIC HEALTH DEPTT.

~~The~~ Mr. Dept. has noted on pages 3-4 ante. The points raised by the Secretary on pages 3-4 ante have been dealt with on pages 6 & 7 ante. ~~In these circumstances explained, the proposals in the~~ ~~last paragraph of Revenue Department's~~ ~~note on pages 9-10 above may perhaps~~ ~~be accepted by this dept. and the~~ ~~file passed to Fin. dept~~

ASSISTANT SECRETARY TO GOVERNMENT 9089 Accts 9 FEB 1950 FINANCE DEPARTMENT

Mr V. vide B on 3-4 ante

1/2/50

The file may be sent to Legal & help the Secretary in the case.

Legal

ASSISTANT SECRETARY 1976 8FEB1950 LEGAL DEPARTMENT

E. & P.H. (C.) No. 7228-1 Cy. Ed 4-2-50.

4-2-50

Legal Dept.

Finance have not seen the case. They may see this file as marked by Revenue

Finance. Legal vide 9/8

8-2-50

8-2-50

Finance (Accts)

(Previous finance notes on page 5 above).

The subsequent notes from page 6 above may be perused. This dept may agree to the resumption of the land without any compensation. As regards the ex-gratia payment of Rs 41-6-0 for 11 trees, the Collector has not given any valid reason for making the payment as contrary to the conditions of alienation; and this dept may therefore, suggest that no ex-gratia payment need be made.

kg 10.2.50

PW 10/V

Cstt 10.2.50

Legal

Legal Department.

According to condition 9 of the grant, the Government may resume the land with any building thereon in the event of infringement of any of the conditions of the grant without payment of compensation for any improvements effecte or other works executed by the grantee. The question whether the conditions of the grant have been infringed in this case is one of fact. The Collector's report at pp.3-4 c.f. shows that the bigger building which, under condition 2 of the grant, was to be used as a convalescent home, was not so used and that the arrangements, amenities and other conveniences usually provided in institutions of the kind had not been provided, although the Agent of the Mission has stated that it has always been open to the people who may require it. The Collector has also reported that only Roman Catholics were allowed to use the building. The Commissioner of Land Revenue, after inspecting the land and buildings was of the view that steps should be taken to resume the land. In the circumstances reported, it seems clear that conditions 2 and 8 of the grant have been infringed. This Department therefore agrees that the Board's recommendations may be accepted.

M.O.O. 9089-Accts-50-I
10.2.50
19 (J)

ASSISTANT SECRETARY 2279 11FEB1950 LEGAL DEPARTMENT

4 1/2 (J)

M 1/54

1/7

1.8 (J)

The payment of Rs.41-6-0 in respect of the trees is suggested by the Board ex gratia, and not as a matter of legal obligation. There is no legal obligation to make this payment.

T. A.S.

The proposal in this file relates to the resumption of the plot of land comprised in S.no 151/1 of Marpadi village, Karkal TK, South Kanara dt from the control of the Basel mission, as certain conditions of alienation contained in Sanad No 2107 dt 21/9/42 have been violated by the Mission. It is also proposed to pay any compensation for the site in question with respect to condition 9 of the conditions of alienation. Fin and Legal depts have agreed to the proposal. As regards the proposal for ex-gratia payment of Rs 41-6-0 for the trees conserved by the mission on the plot without prejudice, for the reasons stated in their note at P. 11 ante Fin have suggested that no ex-gratia payment need be made. Legal consider that there is no legal obligation to make this payment. In the circumstances it is for orders whether this dept may consider it unnecessary to make this ex-gratia payment

2 The file may be sent to the Health dept with reference to their note at P. 10 ante

24/3/50 Health

ADDITIONAL ASST. SECRETARY TO GOVERNMENT REVENUE DEPARTMENT MAR 1950 14311

ASSISTANT SECRETARY TO GOVERNMENT HEALTH DEPARTMENT 25 MAR 1950 1722

24/3/50.

Health (CS)

The note of Rev Dept on p12 ante may be perused. Thro' this has been missent to this Dept it may be passed on to Education Dept U.O

Rev
25.3.50

(B)
25/3/50

27.3.50 Edn

Edn.
27/3

Health U.O
4-2 08/50-1
7.3.50

Edn. (E).

This dept. last noted on page 10 ante.

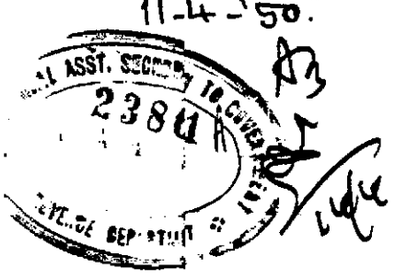
The proposal dealt with in this file is briefly summarised in the Revenue departments note at page 12 ante. This dept. may agree with the views expressed in paragraph 10 of the above note and the case returned to Revenue dept

Edn
3/4/50.

VR
5-4-50

11.4.50 Rev

Edn. Go. No.
7228-3E.
11-4-50.



To A.S.

Please see attached letter from AA complaining about Draft Code submitted for approval.

28/4/50

1.5.50

Dm Uly